

Tinkering With the Charter

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Constitutional Proposals Reflect Social Aims

By Joan Biskupic
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The many Republican proposals to amend the Constitution reflect a new idea of the nation's charter. Congressional Republicans would use the Constitution to alter economic policy, institute new social rules and transform American behavior.

Scholars say the proposed amendments—from one to balance the budget to a ban on flag burning—represent a departure from amendments adopted in the past century, which have been mostly at the margins and for procedural, rather than substantive, goals. Earlier amendments went to the fundamental rights of Americans, from free speech to voting rights.

"This [new] desire to amend the Constitution is part of the general trend to try to write morality into law," said Douglas Kmiec, a Notre Dame law professor and former official in the Reagan Justice Department. "We cannot control our appetite to spend money, so we'll try to control it by writing it into law,"

Kmiec said, referring to Congress's failure to balance the budget.

Kmiec and other scholars said that if many of the proposed changes are adopted, the notion of the Constitution as a document written for the ages could be altered.

But GOP lawmakers, who have failed to get the results they seek through statutory legislation or the courts, say constitutional amendments are necessary to achieve the changes that they believe voters want and that traditional politics has not delivered.

"This is not business as usual," said Sen. Hank Brown (R-Colo.). "It comes from a conviction by many Americans that the future of the country is at stake."

Other pending amendments that seek social change would permit organized school prayer, disallow abortion and prohibit the federal government from passing on the cost of regulations to the states. Also in the stack is a proposal to require congressional term limits and one to allow the president to strike

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individual spending items from appropriations bills.

With the notable exception of Prohibition, amendments in the 20th century have been procedural—to limit the president to two terms in office or to clarify succession when the president or vice president are removed from office.

The earliest amendments and post-Civil War changes to the Constitution were made to protect basic liberties. Beyond those special cases, most of the nation's amendments have altered it only slightly.

Now Republicans say that extraordinary times require great constitutional revision. As Brown put it, the GOP agenda "stems from a conviction that things have gone seriously awry in the country and that basic reform is necessary."

But Sen. Robert C. Byrd (D-W.Va), the Senate's unofficial historian, calls the GOP initiatives an "assault . . . on the Constitution," and Sen. Carl M. Levin (D-Mich.) said during balanced budget debate, "we have never inserted an economic plan into the Constitution. This sets a terrible precedent."

There are two ways to change the Constitution. The only method that has been used requires that a proposal to first win a two-thirds vote of Congress then be ratified by three-fourths of the states. The alternative allows two-thirds of the states to vote to ask Congress to call a convention for proposing amendments.

Since the Constitution was drafted in 1787, only 27 amendments have been added, the first 10 as the Bill of Rights in 1791. Thousands of proposals have died. The 18th Amendment, prohibiting the manufacture and sale of liquor, is a rare example

of a social policy that was adopted. Approved in 1919, Prohibition was repealed in 1933 by the 21st Amendment.

The current proposals, which are not without some Democratic support, strike the core of the Constitution and have stirred debate on what the document stands for. Some legal scholars believe that constant moves to change the Constitution could lead to a habit of revisions or at least less regard for the document.

"The message has been ground into the public that government no longer functions in a systemic way, and this has encouraged these very radical structural reforms," said Louis Fisher, a constitutional expert at the Congressional Research Service.

Common Cause President Fred

Wertheimer is more caustic: "Got a problem? Let's have a constitutional amendment. There is an attitude out there that shows a total lack of perspective on the role the Constitution is supposed to play. Either the Constitution is one of the most important documents in civilization or it's a piece of paper that you change when you don't like something."

Responding to critics who charge that GOP efforts, such as the proposed balanced budget amendment, will undermine the Constitution, Brown said, "If bankrupting the government is not undermining the nation, I don't know what is."

During the balanced budget debate, Sen. Larry E. Craig (R-Idaho) referred to constitutional protections for speech and religion and said, "It is

clear from bitter experience that the American people need one additional protection, from a profligate, borrow-and-spend government."

When Rep. Gerald B. Solomon (R-N.Y.) introduced a proposal to ban flag desecration, he said he was seeking "the long overdue protection to Old Glory."

The nation's founders knew that the Constitution would need adjustments but devised methods that would make changing it difficult. "It is a good canvas, on which some strokes only want retouching," Thomas Jefferson once said.

But Jefferson, who has become the great American figure to quote on Capitol Hill, also said that laws must go hand-in-hand with progress and likened a society constrained by an out-

dated Constitution to a man forced to wear the coat that fit him as a boy.

Still, constitutional experts say the framers intended the document to be a broad outline of national principles rather than a mandate for specific social behavior.

"We have a behavioral problem here on spending and to think that our behavior will be changed by a few sentences in the document is sad," Kmiec said of the balanced budget amendment. "That's what was sad about Prohibition as well. We can no more stop someone from destroying himself with alcohol than we can control fiscal sanity with an amendment."

Northeastern University law professor Edward O. Correia, a former aide to a Democratic Senator, agreed the budget amendment was unusual

for its message about government: "It says, 'Limit us.'"

But Correia added that amendments on fractious social and cultural issues tend to languish because they don't get the requisite votes. In the early 1980s, for example, after Ronald Reagan became president, GOP leaders failed to get amendments for a balanced budget, organized school prayer and an abortion ban.

Members from both sides, however, say the current proposed amendments have a greater chance of adoption because the Republicans, who have taken the lead on these amendments, control both chambers.

Staff researcher Ann O'Hanlon contributed to this report.